

COPY

COUNTY COURT OF THE STATE OF NEW YORK

COUNTY OF SUFFOLK : TRIAL TERM: PART 7

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THE PEOPLE OF THE STATE OF NEW YORK

CASE NO.  
00539-2007

-against-

LAMAR WHITEHEAD,

190.65-01  
VOIR DIRE &  
TRIAL

Defendant

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Riverhead, New York  
February 5, 2008, 2pm

BEFORE: HON. JAMES HUDSON,  
County Court Justice

APPEARANCES:

HON. THOMAS J. SPOTA, ESQ.  
District Attorney of Suffolk County  
For the People  
200 Center Drive  
Riverhead, New York

BY: RAPHAEL PEARL, ESQ.  
Assistant District Attorney

JODI FRANZESE, ESQ.  
Assistant District Attorney

WILLIAM KEAHON, ESQ.  
Attorney for Defendant  
One Suffolk Square  
Islandia, New York

BARBARA O'DONNELL  
Official Court Reporter

FILED  
OCT 20 2009  
JESSICA PERALES  
CLERK OF SUFFOLK COUNTY

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Proceedings

THE CLERK: Case on trial, People  
versus Whitehead. All parties present.

THE COURT: Do you have a copy of the  
Court's decision on the underlying Huntley  
Hearing?

MR. KEAHON: I have, Your Honor.

THE COURT: I believe I supplied a  
courtesy copy for counsel.

MR. KEAHON: Yes, Judge.

THE COURT: Your exception will be  
noted, Mr. Keahon.

MR. KEAHON: Thank you, Judge.

THE COURT: Is there anything further  
from the People before we hear from Mr. Keahon  
regarding the People's Molineux application at  
this time or do you want to--

MR. KEAHON: I need more time.

THE COURT: You do feel comfortable  
beginning --

MR. KEAHON: Absolutely.

I do have a couple of things I wanted  
to raise with the Court, if I could.

THE COURT: Yes. I would be happy to  
hear them now.

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1 Proceedings

2 MR. KEAHON: Judge, in review of the  
3 file, I saw that a proforma motion was done as  
4 far as the search warrant for 92 Howland Avenue  
5 in New Jersey.

6 THE COURT: Yes.

7 MR. KEAHON: I know it is somewhat  
8 late but I would like the opportunity, with the  
9 Court's permission, to address a motion on the  
10 issue of the search warrant with that residence  
11 and what was recovered.

12 THE COURT: Do the People wish to be  
13 heard?

14 MR. PEARL: Yes, Your Honor.

15 Your Honor, just for the record,  
16 there were actually five search warrants  
17 executed in the course of this investigation.

18 MR. KEAHON: Yes.

19 MR. PEARL: Just so you know.

20 Obviously, I would oppose, would ask  
21 for any motions to be made on notice to the  
22 People in writing. We are well outside the  
23 forty-five days any way. You calculate it.  
24 Obviously, we have a jury waiting. We are not  
25 looking to litigate now the search warrants.

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THE COURT: Thank you.

I understand the reason that you seek to make the motion, Mr. Keahon. However, the Court has ruled on the question of the propriety of the search, based upon the motion papers of your predecessor. I think it would be an improper exercise in discretion to revisit it at this time.

I do find that it is time barred and your exception is noted.

MR. KEAHON: Thank you, Judge.

THE COURT: You are quite welcome.

MR. KEAHON: There was another issue.

As part of a prior decision of the Court dated October 30th of two thousand and six, it appears that, that there was an application to suppress an out of court voice identification and the Court indicated that you would hold a hearing to determine whether the voice identification of the defendant by a potential witness requires a 710.30 Notice.

Was that resolved, Your Honor?

THE COURT: I recall that at the hearing that we held on November 7th, that was

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Proceedings

not, that was not presented, that was not part of the proof.

MR. PEARL: No, Judge.

We are going to offer tape recordings of the defendant to friends of his. It is all confirmatory. There is no need to do any kind of noticing requirements or no 710.30 Notice or a hearing. Case law was clear on it, I read it, so.

MR. KEAHON: Respectfully, I don't think it is the District Attorney's place to make a decision like that, as to whether or not something like that is confirmatory or not.

THE COURT: Let me just refer back to the original decision, referring to the one of October 30th.

MR. KEAHON: Yes, Your Honor.

It is on page two, the second paragraph from the top.

THE COURT: Rather than delay the jury selection at this point in time, which witness in particular is it, Mr. Pearl, because I did direct a hearing on it.

MR. PEARL: Judge, we are going to --



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1  
2 the tape recordings which were turned over to  
3 the defense, I believe, Mr. Keahon probably has  
4 them, we are going to play the voice recordings  
5 of friends of the defendant. One of them might  
6 be Nigel Defreitas, if he does testify. I am  
7 not sure who we did the actual hearing with, the  
8 Wade with the Rodriguez issue, which was  
9 actually stipulated by Miss Abate in essence  
10 that it was confirmatory.

11 All the people hearing the tapes will  
12 be all people that have acquaintances with the  
13 defendant. And I understand I am going to have  
14 to lay my foundation that they are acquainted  
15 with his voice in that way and it was all  
16 confirmatory.

17 THE COURT: Once again, the source of  
18 the tape recordings?

19 The voices.

20 MR. PEARL: The voice on the  
21 recording?

22 THE COURT: Yes.

23 MR. PEARL: The male voice?  
24 The defendant.

25 THE COURT: But who actually made the

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recording?

MR. PEARL: The defendant made the recording on voicemail and then we taped those voicemails over the phone.

THE COURT: All right.

MR. PEARL: By calling the voicemail numbers up.

MR. KEAHON: Respectfully, Judge, on page three of your order, dated October 30th of two thousand and six, it indicates that the defendant also moved to preclude a voice identification by a potential prosecution witness because the People failed to disclose the identification and their 710.30 Notice People versus Collins. The People argue that the witness was an acquaintance of the defendant, therefore, no notice was required because the identification was only confirmatory.

While the People are correct that a confirmatory identification is not required in a CPL 710.30 Notice, the Court cannot ascertain the level of familiarity this witness had with the defendant from the papers submitted. In

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fact, neither in the defendant's nor the People's paper ever indicate the identity of the witness or how the identification procedure was performed. The People merely responded that the witness and the perpetrator were known to each other as they were acquaintances for a number of years.

The People did not describe the nature of their relationship and did not give the basis for the belief that this witness could identify the defendant's voice.

The People's response was essentially a boiler plate answer that could have been made in any identity confirmation or argument.

Therefore, the Court will hold a hearing prior to trial to determine whether the out of court identification, the defendant was an identification that required CPL 710.30 Notice.

Now based upon the District Attorney's comments today, that there are a number of individuals that they seek to have this identification of my client's voice, I would move to preclude all of it because they



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have made a decision it is not required. They have not raised this issue to the Court until I did just now.

Therefore, I move to preclude or ask for the hearings.

THE COURT: Do you wish to be heard further?

MR. PEARL: Yes, Your Honor.

First of all, there is no basis for preclusion, counsel's asking for. However, the People will be bringing forward the defendant's friends, acquaintances, people who I am going to have to lay the foundation before I present the case before the evidence. If I can't lay the foundation, the Court will not allow me to do it, as it will be a simple misdemeanor harassment trial. When you have a voice recording over the phone and that is all I am going to be doing, and the witnesses are going to be called, one of them is probably going to be Nigel Defreitas. It might be a few of the other defendant's friends, it might be the co-defendant in this case who was close to the defendant, who have all had relationships with

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1  
2 the defendant. And I am going to lay that  
3 foundation before I obviously elicit the  
4 testimony.

5 MR. KEAHON: That is what disturbs  
6 me, Your Honor. I am a new attorney on the  
7 case, the Court issued an order, we now just  
8 don't have one individual who they hoped to make  
9 a voice identification but a number of  
10 witnesses, which was never disclosed to me or to  
11 any other prior counsel, that I am aware of.

12 We are about to start jury selection.  
13 You directed that a hearing be held so that you  
14 could make certain legal determinations. It was  
15 never raised until 2:38 by myself. So had I  
16 gone forward, I would have been selecting a jury  
17 not knowing what I was facing.

18 So I would move to preclude.

19 THE COURT: The application to  
20 preclude will be denied.

21 The question is how is this to be  
22 handled, whether or not the People would have to  
23 bring in the witnesses in advance or whether or  
24 not -- and I suggest this is, the motion for  
25 preclusion being denied, your exception being

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noted, is that what I suggest, gentlemen, is that the People not refer to this voice identification during voir dire and as the witnesses are brought before the Court outside of the presence of the jury, we have a hearing in limine to determine whether or not it is confirmatory. At that point in time you will be able to cross-examine the witnesses and I would hear any application at that time, so that the potential jurors are not tainted regarding the possibility of improper voice identification procedures.

The People will not refer to them during voir dire or their opening statement.

MR. KEAHON: Respectfully, Judge, I disagree. Respectfully, the Court ordered it prior to trial. Once again I raised it prior to trial when I went over the Court's order. The District Attorney chose not to raise it. I can't pick a jury unless I know what the decisions of this Court are going to be. It will effect the manner in which I pick a jury.

If the Court directs me to go forward, I will certainly go forward.

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THE COURT: If I can see counsel in chambers before, please.

(Whereupon Mr. Pearl, Ms. Franzese, and Mr. Keahon complying.)

THE CLERK: Case on trial, People versus Whitehead. All parties are present.

THE COURT: Mr. Whitehead, if you would be so kind as to follow the officer's instruction, you can have a seat next to Mr. Keahon. Thank you.

After a conference in chambers pursuant to the Court order of October 30th of two thousand and six, the Court will direct the hearing in the following manner. In order not to waste the time of our potential jurors downstairs, yet in the same token avoid any prejudice to Mr. Whitehead, the Court will begin it's colloquy of the questioning -- excuse me, of the potential jurors, and counsel will not be asked to begin their inquiry of them until after this hearing is held.

It is my understanding that the detective in question can be called to testify tomorrow.

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2 MR. PEARL: Yes, Your Honor.

3 THE COURT: Thank you.

4 And prior to beginning your voir  
5 dire, counsel, the hearing will be held and the  
6 Court will issue a ruling as to the propriety of  
7 the alleged voice recordings. And note your  
8 exception, Mr. Keahon.

9 MR. KEAHON: Thank you, Judge.

10 Respectfully, if the District  
11 Attorney's Office could make me a copy of that,  
12 I know I saw, of that cassette tape that you  
13 have, I will give you, I will bring tomorrow a  
14 blank copy.

15 MR. PEARL: Okay.

16 MR. KEAHON: I will supply one for  
17 you.

18 MR. PEARL: I turned it over already  
19 to Miss Abate, the recordings.

20 MR. KEAHON: Oh, I apologize.  
21 Because the order says that you wouldn't. There  
22 is something in the order indicating that they  
23 would have to supply one to you and they hadn't.

24 MR. PEARL: It was just, so you know,  
25 I did turn over as part of discovery the copies



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of the voice recordings. I can try to make another.

MR. KEAHON: If you could, and just have it maybe by Friday, if you could.

MR. PEARL: Okay.

THE COURT: I believe the People have an application regarding the indictment before the Court.

MR. PEARL: Yes, Your Honor.

At this time, the first application under Indictment 539-07 is to move to dismiss the following counts.

THE COURT: Yes.

MR. PEARL: Count 5.

MR. KEAHON: Can you go slow, please.

MR. PEARL: Yes.

Count five, Attempted Identity Theft in the First Degree.

Count nine, Attempted Identity Theft in the First Degree.

THE COURT: Perhaps, counsel, if I can help you, as far as moving this along.

You are referring to all of the counts charging the defendant with Identity

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Theft in the First degree, counts 11, 13, 14, 18?

THE CLERK: Fourteen is Attempted Grand Larceny.

THE COURT: Oh.

MR. PEARL: If you want me to do it that way. I was trying to go slow for Mr. Keahon.

THE COURT: We are just going by numbers right now. We will go by all the Attempted Identity Theft.

MR. PEARL: Count 5, count 9, count 11, count 13, count 18, count 23, count 25, count 27, count 29, count 31, count 33, count 35, count 37, count 39, count 41, count 43, count 45, count 47, count 49, count 51, count 53, count 55, and count 57.

THE COURT: All right.

MR. PEARL: And I have prepared a new indictment for the Court, numbered count 1 through 34. Before I submitted the-- well, I will submit a copy to the Court.

I would also like to make some amendments now to the body of the indictment.

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2 THE COURT: All right. I will hear  
3 your application at this time.

4 MR. KEAHON: Excuse me, Mr. Pearl,  
5 would that be on what you just gave me?

6 MR. PEARL: Correct.

7 MR. KEAHON: You will be addressing  
8 that?

9 MR. PEARL: Yes.

10 THE COURT: Gentlemen, this is just  
11 for re-numbering for purposes of the jury. As  
12 far as the Court's record is concerned, there  
13 will be these gaps because otherwise it makes it  
14 very difficult as far as the computer itself.  
15 The jury then will only hear these numbers, will  
16 not hear the other ones.

17 MR. PEARL: Will they hear in  
18 sequential order count 1, count 2, count 3?

19 THE COURT: This is what the jury  
20 would then see. I am talking about just the  
21 official court record, that just among counsel,  
22 that the original numbers are the ones which  
23 count notwithstanding the gaps. We understand  
24 the rationale for it. We don't speculate as to  
25 that.

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MR. PEARL: Thank you, Your Honor.

THE COURT: You're quite welcome.

I will hear your application.

MR. PEARL: Judge, when I refer now to the amending of the count, I will refer to it under the new indictment, count one, is that okay?

THE COURT: Yes. Just count 1, 2, 3, yes.

MR. PEARL: Initially, Your Honor, I will move as to count -- move as to count six, where it charges the defendant, Lamar Whitehead, on or about March 25, 2005, other than alleged in this case, I am amending that to, in count five.

THE COURT: Let me just make sure.

MR. KEAHON: So what you are giving now, the amendment is what I am looking at?

MR. PEARL: Correct.

MR. KEAHON: Great.

MR. PEARL: It did read --

THE COURT: Excuse me one second.

THE CLERK: Counsel, one second.

(Whereupon the clerk conferring with

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the Court.)

THE COURT: We have to use both count six.

MR. PEARL: Okay.

THE COURT: All right.

MR. PEARL: So count six was old count seven.

THE COURT: Okay. Thank you.

MR. PEARL: And I am moving to amend a part that says, other than alleged in count, it did read count six, I am now moving it to read as count five because of the way the indictment was dismissed.

THE COURT: Thank you.

Do you wish to be heard, Mr. Keahon?

MR. KEAHON: No, Your Honor.

THE COURT: Thank you.

Application granted. It will be amended.

MR. KEAHON: I assume all these amendments are because of the new indictment that has been drafted because of dismissals of the counts?

MR. PEARL: No, but when they are



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2 not, I will make you aware of which ones are  
3 not. I didn't get to that.

4 MR. KEAHON: Okay.

5 MR. PEARL: Count-- I am going to ask  
6 the Court now to move to the attention on the  
7 new indictment count eight. On the old  
8 indictment it was count ten. The portion that  
9 reads by the defendant, Lamar Whitehead, on or  
10 about February 15, two thousand and five. And  
11 it did read other than alleged in count eight of  
12 this indictment. I am amending that to read  
13 other than alleged in count seven of this  
14 indictment.

15 THE COURT: Thank you.

16 MR. PEARL: That is done because the  
17 indictment has been changed.

18 THE COURT: Any opposition,  
19 Mr. Keahon?

20 MR. KEAHON: No.

21 THE COURT: Thank you.

22 Application granted.

23 MR. PEARL: Judge, I don't have the  
24 old indictment in front of me because I made  
25 corrections on mine.

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However, the next amendment would be count nine of the new indictment and count ten.

And these are going to be amendments outside of the reason for dismissing counts out of the indictment.

And those old counts were count 12, count 14.

THE COURT: Thank you.

MR. PEARL: The Identity Theft, First Degree, in violation of 190.80 subdivision 3 and Attempted Grand Larceny, Second Degree, in violation of 110.155.40 subdivision 1.

Those two counts are what I am moving to amend.

MR. KEAHON: Count 9 and 10.

MR. PEARL: Of the new indictment. Count 12 and 14 of the old indictment.

Are you ready for the amendment, Your Honor?

THE COURT: Yes, please.

MR. PEARL: I am moving to amend within the body of count 9, the defendant, Lamar Whitehead on or about October 14, two thousand and four. In this amendment I would ask for,

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the Court is, within the jurisdiction of Suffolk County, New York.

MR. KEAHON: What did it read?

MR. PEARL: I just have to get the old indictment. I don't have the old indictment in front of me.

THE COURT: Count 13, which it refers to the original one.

MR. PEARL: That would be count 12.

THE COURT: Excuse me, count 12. That is right. That is Attempted Identity Theft.

Defendant, originally just reads, refers to jurisdiction, the original, Lamar Whitehead on or about October 14, 2004, assumed the identity of Nauri Khabieh, a Suffolk County resident, by using the personal identifying information of that person and committed or attempted to commit a Class D Felony or a higher level crime.

And the People seek to insert the --

MR. PEARL: We move.

THE COURT: Yes. Insert within the jurisdiction of Suffolk County and remove a

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Suffolk County resident.

MR. PEARL: Correct.

MR. KEAHON: I would, then Judge, I would oppose that amendment and argue that this count should have been dismissed based upon motion, as there is no jurisdiction pled.

THE COURT: People wish to be heard?

MR. PEARL: It is going to be the same argument on the next. I will do the next.

THE COURT: Thank you.

MR. PEARL: Count 10 is the defendant, Lamar Whitehead, on or about October 14, 2004, I am moving to amend within the jurisdiction of Suffolk County, New York. I am adding the word within the jurisdiction.

THE COURT: And originally the words were in Suffolk County, New York.

MR. PEARL: Correct.

THE COURT: All right.

Then Mr. Keahon, you could state your objection once again as to both.

MR. KEAHON: Yes.

They should have been dismissed on motion because they had not pled jurisdiction.

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2 THE COURT: I will hear you,  
3 Mr. Pearl, briefly.

4 MR. PEARL: I am moving to amend the  
5 indictment pursuant to CPL Section 200.70, I  
6 believe, and I am moving to amend because um--  
7 well, specifically, Your Honor, my Bill of  
8 Particulars which was served on counsel and  
9 obviously, not Mr. Keahon but Miss Abatte,  
10 actually specified the jurisdiction as to these  
11 counts. And I refer to the Bill of Particulars  
12 paragraph 3, where I said please see attached  
13 arrest report with the exact time and place of  
14 this defendant's arrest. And I wrote  
15 additionally, all the victims under this  
16 indictment are Suffolk County residents.

17 Additionally, any larceny charge was  
18 committed within five hundred yards of Suffolk  
19 County.

20 Therefore, pursuant to Penal Law  
21 Section 20 -- 20.40-- 20.40 4c and 20.40 4l,  
22 jurisdiction appropriately within Suffolk  
23 County.

24 I would refer back.

25 So, Judge, the case law is clear that



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2 the amendment of the indictment is permitted if  
3 it conforms the indictment to the theory of  
4 prosecution, and reflected in the evidence  
5 before the Grand Jury. This was specifically  
6 charged in the Grand Jury as well. That --  
7 those sections of 20.40 of the Penal Law.

8 And I refer the Court to People  
9 versus Gray, Third Department case, 157 AD 2d.  
10 It said, the location of the crime amended to  
11 conform to evidence before the Grand Jury and as  
12 provided in the Bill of Particulars was omitted  
13 by the Court.

14 THE COURT: Thank you.

15 Do you wish to be heard further,  
16 Mr. Keahon?

17 MR. KEAHON: Yes, I do.

18 Count 9 deals with identity theft,  
19 not a larceny. And the District Attorney made  
20 reference to sections within the Penal law and  
21 cited them to the Court just now, having to do  
22 with a larceny, not an identity theft.

23 Secondly, I don't know what was  
24 instructed-- I don't know the language of the  
25 instruction to the Grand Jury.

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2 Your Honor reviewed them, as I  
3 understand, reviewing prior motions of defense  
4 counsel, they all asked the Court for permission  
5 to have the legal instruction and that was not  
6 granted.

7 So I don't know what the Grand Jury  
8 was instructed on.

9 THE COURT: Thank you.

10 The Court finds that this is  
11 essentially the difference between a larceny and  
12 an identity theft. For the purposes of allowing  
13 an amendment of the pleadings is not something  
14 that distinguishes, makes it inapplicable. This  
15 is something more in the nature of a  
16 typographical error and does not prejudice your  
17 client by allowing the amendment to conform to  
18 the proof submitted before the Grand Jury.

19 The People's application -- your  
20 exception will be noted.

21 MR. KEAHON: Thank you.

22 Thank you, sir.

23 THE COURT: The People's application  
24 will be allowed.

25 MR. PEARL: Thank you, Your Honor.

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Now moving the Court's attention to under the new indictment, count 27, which is under the old indictment was count 42.

Is the Court ready for me?

THE COURT: Yes.

MR. PEARL: I am moving to read the body where it says, other than alleged, to read, in count 26. And that is done because the indictment has been amended.

MR. KEAHON: Thank you.

THE COURT: Thank you.

Any objection?

MR. KEAHON: No, sir.

THE COURT: The application is then allowed.

MR. PEARL: Moving Your Honor's attention to the new indictment, count 29, the old indictment count 46. Once again, I am moving to amend the body of the charge where it reads, other than alleged in count 28. Once again, that amendment is done because of the dismissal of, of the counts of the indictment.

THE COURT: Do you wish to be heard, Mr. Keahon?

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MR. KEAHON: No, Your Honor.

THE COURT: Application would be granted.

MR. PEARL: Actually, Your Honor, I am sorry, I made a silly mistake. I meant to dismiss other than any. The difference is different victims.

THE COURT: Do you wish to make it count 28 or just say other than alleged in any count?

MR. PEARL: No. Defendant, Lamar Whitehead, on or about February 22, 2005, assumed the identity -- no, I had it right. I am sorry. Count 28.

I don't know why-- I just got confused in the numbering.

I go back to my original application. That is all I did for the amendment, Your Honor.

THE COURT: Okay. Thank you.

That is all the amendments?

MR. PEARL: Yes.

THE CLERK: So Mr. Pearl, just for my record, I am showing, as to the old indictment

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numbers, count 7, 10 --

MR. PEARL: Just go slower.

THE CLERK: I am sorry.

Count 7.

MR. PEARL: Yes.

THE CLERK: Count 10.

MR. PEARL: Correct.

THE CLERK: Count 12.

MR. PEARL: Count 12 of the old  
indictment?

THE CLERK: Yes.

MR. PEARL: Correct.

THE CLERK: Count 14.

MR. PEARL: Correct.

THE CLERK: Count 42.

MR. PEARL: Correct.

THE CLERK: And count 46.

MR. PEARL: Correct.

THE CLERK: Have all been amended.

MR. PEARL: Correct.

THE CLERK: Okay. Thank you.

(Whereupon the clerk conferring with  
the Court.)

THE COURT: Do we have a witness list



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2 that I can read to the potential jurors?

3 MR. PEARL: Yes. I apologize for--  
4 can I hand it to you collectively?

5 THE COURT: Yes.

6 MR. PEARL: Some of the companies  
7 have downsized, some of them have shut down.  
8 The mortgage. So they don't have names of  
9 witnesses. Some of them are changing and they  
10 are not able to give me the names yet. Some of  
11 them, I wrote Paetec Communications or Verizon,  
12 they don't have a name yet for me, to tell me  
13 who is flying in. They gave me Yahoo.

14 THE COURT: That is why they have  
15 alternates.

16 MR. PEARL: Most of them are flying  
17 in.

18 THE COURT: Because of the length of  
19 the indictment, even as amended, I will not read  
20 it in toto. What I will read is charges and  
21 refer to the jury and say counts in this case,  
22 some instances. For instance, count 2 and then  
23 say counts charges the defendant with Identity  
24 Theft in the First Degree, counts 3, 4, 7, 8, 9,  
25 counts 11 through 15, counts 17 through 34 there

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2 are two different theories encompassed by one.  
3 I will refer to the count. Two is also the same  
4 theory expressed, counts 11 and 15. Count 3 is  
5 the one which has the remainder of the Identity  
6 Theft in the First Degree. And count 5 just  
7 reads, I will read one count and then refer to  
8 count 16 and 6, and read the other ones which  
9 are individual with an admonition to the  
10 potential jurors to take no notice from a mere  
11 fact that there is thirty-four charges in the  
12 indictment. And that is one of the reasons that  
13 they could be excluded as jurors in the case.

14 Are there any questions that you  
15 would prefer the Court to ask and not counsel?

16 MR. KEAHON: Yes, Your Honor.

17 First of all, I would ask you to  
18 instruct them obviously, on the presumption of  
19 innocence, the burden of proof, and should the  
20 defendant choose not to testify, they can not  
21 consider it in any way, no adverse inference can  
22 be drawn.

23 THE COURT: You would like that  
24 specific charge?

25 MR. KEAHON: Yes.

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THE COURT: Very good.

MR. KEAHON: And secondly, Your Honor, I would request that you make an inquiry on any member of the family, friends, relatives that may have had what they believe to be an identity theft.

THE COURT: When I ask the general questions of any potential jurors having been the victim of a crime, I will specify that as well.

MR. KEAHON: Great. Thank you, Judge.

THE COURT: Let me just write my own notes to that.

MR. KEAHON: My earlier request to graft a motion and submit it to the Court on the search warrant as to the address of 92 Howland Avenue in Jersey, I incorporate that request as to all of the search warrants that were executed.

I believe there were five, Mr. Pearl?

MR. PEARL: I believe so, yes.

MR. KEAHON: And I understand that your ruling is the same.

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1  
2 THE COURT: Yes. Thank you. But I  
3 appreciate you making the record more  
4 comprehensive.

5 MR. KEAHON: And I do take exception.

6 THE COURT: Quite appropriate,  
7 counsel, I understand.

8 Mr. Keahon, have you discussed with  
9 Mr. Whitehead the question of whether or not he  
10 wishes to be present at side-bar conferences or  
11 whether or not he is willing to execute an  
12 Antomarchi Waiver?

13 MR. KEAHON: I did not but I will do  
14 that right now.

15 THE COURT: If you would. Thank you.

16 (Whereupon Mr. Keahon conferring with  
17 defendant.)

18 MR. KEAHON: I have, Your Honor, and  
19 we are prepared to sign such an Antomarchi form.

20 THE COURT: Thank you.

21 Mr. Avitable, if you would be so kind  
22 as to present it to defense counsel, so he can  
23 see it with Mr. Keahon.

24 THE CLERK: (Complying.)

25 MR. KEAHON: Thanks.

## Proceedings

1  
2 THE COURT: Could we bring them up,  
3 have them outside the courtroom, please. Thank  
4 you.

5 I have in my hand what is entitled an  
6 Antomarchi Waiver and it will be entitled Court  
7 Exhibit Roman Numeral number I. It reads as  
8 follows. I, Lamar Whitehead, have been advised  
9 by my attorney, Mr. William Keahon, Esq., that I  
10 have a constitutional and statutory right to be  
11 present during any material stage of the trial.  
12 However, after consulting with him, I waive the  
13 right to be present at any side-bar discussions  
14 or conferences conducted in chambers that relate  
15 to the selection of the jury, rulings by the  
16 Court concerning the admissibility of evidence,  
17 and any pre-charge conference.

18 I have been advised by my attorney  
19 that he will be present at any side-bars or  
20 conferences in chambers and I am satisfied that  
21 he will effectively represent me at such side-  
22 bars or conferences in chambers.

23 Mr. Whitehead, there is a signature  
24 at the bottom of this page. Actually, it is the  
25 second to last signature. Is that your



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signature?

THE DEFENDANT: Yes, sir.

THE COURT: Prior to signing this document, did you read through it with your attorney?

MR. KEAHON: He really didn't, Judge. I will do it quickly. I explained the whole thing to him.

THE COURT: I know, counsel. And my apologies for being pedantic.

MR. KEAHON: I would indicate to the Court that I told my client that since the Antomarchi case I have everyone advised, everyone of my clients on trial to sign such a document, and they all have. He is not a lawyer, he doesn't know.

THE COURT: No, I understand.

Take your time going over that document, Mr. Whitehead, with your attorney.

(Whereupon Mr. Keahon conferring with the defendant.)

THE COURT: Thank you, Mr. Keahon.

Thank you, Officer.

Have you had the opportunity,

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Mr. Whitehead, have you had the opportunity to read through this document?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand its terms?

THE DEFENDANT: Yes.

THE COURT: Do you agree to be bound by its terms?

THE DEFENDANT: Yes.

THE COURT: That is your signature?

THE DEFENDANT: Yes.

THE COURT: Mr. Keahon, is that your signature?

MR. KEAHON: It is.

THE COURT: Thereby indicating you witnessed your client's signature?

MR. KEAHON: Yes. And I fully explained it to him and advised him I thought it was in his best interest to do just that.

THE COURT: As the Court knew that Mr. Keahon, this will be marked Court Exhibit number Roman Numeral number I.

THE CLERK: Court I so marked.

THE COURT: For your own notes,

## Proceedings

1  
2 counsel, we are going to be seating the  
3 potential jurors beginning with number one and  
4 running through number nine, and then ten  
5 through eighteen. Hope to be able to select  
6 four alternates in this matter, given the  
7 anticipated length of the trial.

8 MR. KEAHON: And there is nine in the  
9 back also, Judge?

10 THE COURT: Yes, there will be nine  
11 in the back.

12 MR. KEAHON: Ten challenges, Judge?

13 THE COURT: Yes. The top count being  
14 a D.

15 MR. PEARL: Judge, I turned over just  
16 about all of the Rosario today, ten bound  
17 binders, three hundred pages, three thousand  
18 pages of Rosario. Mr. Keahon has a copy. I  
19 brought a box for the Court. My understanding  
20 is the Court only takes the Rosario to initial.

21 THE COURT: If it is called into  
22 issue, then we will mark it as a Court exhibit  
23 at this time.

24 MR. PEARL: Maybe a few more pages,  
25 less, than three hundred, three thousand bound.

## Proceedings

1  
2 THE COURT: Acknowledge receipt,  
3 Mr. Keahon?

4 MR. KEAHON: Yes, Judge. I checked  
5 each of the volumes and they total. It was very  
6 nice the front cover indicated how many pages  
7 were contained in, and as it was, as Mr. Pearl  
8 said, it was bound, which is unusual for the  
9 District Attorney's Office to do that but I  
10 think because of the number of documents or  
11 pages that were involved, it was nice that it  
12 was done that way, and I appreciate it. There  
13 are three thousand bound for me to go through.  
14 I went through my best.

15 MR. PEARL: We will have an index of  
16 everything contained within it.

17 MR. KEAHON: Great.

18 MR. PEARL: Just when we finish. So  
19 you will have them.

20 MR. KEAHON: I will do my best to get  
21 through it all.

22 THE COURT: And as we move along in  
23 this case, given certain down time, given the  
24 logistics of the Court running its calendar, the  
25 Court would be happy to work with counsel as far

## Proceedings

1  
2 as their schedule.

3 MR. KEAHON: Thank you.

4 THE COURT: You are quite welcome.

5 Is there anything else to place on  
6 the record before we bring in the prospective  
7 jurors?

8 MR. KEAHON: No, Your Honor.

9 THE COURT: Mr. Whitehead, just as a  
10 matter of etiquette, when the prospective jurors  
11 come in, we all rise because they are potential  
12 judges of the facts. However, there won't be  
13 enough seats for everyone. I remain standing  
14 out of deference but I will direct you all to be  
15 seated. So they will see there is no disrespect  
16 by counsel but you might as well all get chairs  
17 while you can.

18 MR. PEARL: Before you bring anybody  
19 in, I did put on the record yesterday that if  
20 the defendant chooses to testify, we intended to  
21 cross-examine him. There was never a request  
22 for a Sandoval Hearing, that I recall, but I am  
23 putting you on notice, if he decides to testify,  
24 that we would like to cross-examine him on his  
25 criminal history.



## Proceedings

1  
2 MR. KEAHON: I think, Judge, what we  
3 did discuss, we would address it, specifically  
4 said, Sandoval. I don't have to do it now. We  
5 can do it later this afternoon because we are  
6 not going to be doing any inquiry of the jury.

7 THE COURT: Correct.

8 MR. KEAHON: So I have no problem  
9 moving forward and we will address the Sandoval  
10 issue before we get up to talk.

11 THE COURT: If you wish, I also  
12 included it in giving you the time to respond to  
13 the People's Molineux application, if you wish  
14 to respond at that point in time, will be happy  
15 to accommodate you.

16 MR. KEAHON: Thank you, Judge.

17 THE COURT: Anything further at this  
18 time?

19 MR. PEARL: No.

20 MR. KEAHON: No.

21 THE COURT: We will bring in the  
22 potential jurors, please.

23 (Whereupon prospective jurors  
24 entering courtroom.)

25 THE COURT: Good afternoon.

## Proceedings

1  
2 Sergeant, we have some extra seats at  
3 the front still.

4 The fact that you are seated in the  
5 jury box does not mean that you are being  
6 selected for the jury. We are just trying to  
7 find as many seats as we possibly can. Thank  
8 you.

9 The parties may be seated, People,  
10 Mr. Keahon, Mr. Whitehead.

11 (Whereupon all complying.)

12 THE COURT: We just have to wait  
13 until everyone gets brought into the courtroom.  
14 My apologies. You will notice I keep standing  
15 until every juror has a seat. So it moves this  
16 part of the trial along very quickly. We just  
17 have to wait for just a moment.

18 All right. Can you hear me all the  
19 way in the back?

20 Thank you.

21 Good afternoon everyone, my name is  
22 James Hudson, I am a County Court Judge and I  
23 wish to welcome you all to your courtroom.

24 We will call the case at this time,  
25 please, Mr. Avitable.

## Proceedings

1  
2  
3 THE CLERK: Case on trial, People  
4 versus Lamar Whitehead. Prospective jurors, all  
5 parties present.

6 THE COURT: Is the People ready?

7 MR. PEARL: The People are ready.

8 THE COURT: Is the defense?

9 MR. KEAHON: Yes, we are, Your Honor.

10 THE COURT: It is estimated this  
11 trial will follow the following schedule. Jury  
12 selection will begin today and hopefully finish  
13 by the 11th of this month. The trial itself may  
14 last until the 20th of March. A schedule has  
15 been handed out. I hope all of you have a copy  
16 of it. But to repeat, there will be no trial on  
17 Friday, the 8th or the 15th. Additionally,  
18 there will be no trial on the 12th, Lincoln's  
19 Birthday, and the 18th, Presidents' Day, as  
20 shown on the schedule.

21 On some days the trial will run from  
22 two o'clock in the afternoon to five o'clock in  
23 the afternoon. On other days the trial may  
24 commence at eleven o'clock in the morning and  
25 run through 1:30, and then again in the  
afternoon.

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We will try to give you any changes in this schedule. Although we will always try to end the trial at 5 pm, there may be times we go into the early evening. During deliberations, the end of the trial, the case may be longer. However, there will be no sequestration, you will go home at night.

If you are on this jury you will be committed to the schedule just described to you. Jury duty is a sacrifice and obligation but that obligation has some limitations based on the expected length of this trial. If you have an emergency situation that prevents you from being here, you will be excused. An emergency includes but it is not necessarily limited to, a scheduled medical operation, a vacation where you have already purchased airline or railroad tickets, military service, you are the sole proprietor of business where service here would place you in default of a legal obligation, or you are the sole caregiver to a child or incapacitated person and there is literally no one else to take care of that person during trial hours.

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That is the type of situation that would be a valid excuse for jury duty on this occasion but this is not a long trial by any means by courthouse standards.

If you serve on this jury you will have discharged your obligation and may not be called again for six years.

If you don't want to serve this time, of course, I will honor your request but you do run the risk to be called for an even longer trial in the future.

Additionally, if you answer yes to any of the following questions, you will be discharged.

Does anyone have any hearing problem or any other type of physical challenge or medical difficulty that would prevent him or her from sitting as a juror? For instance, you would have to sit in the jury box and listen to evidence, testimony received, received for approximately, an hour and a half before breaks.

Do any of you know why you wouldn't sit as a fair and impartial juror?

Do any of you know of any personal,



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moral, ethical or religious or other reason not to sit as a juror?

This case involves the following. It is alleged, note the word, that is all this is, an allegation, nothing has been proven and no proof has yet been submitted, and the defendant is presumed innocent of these charges.

It is alleged that going back into September of two thousand and four, from March of 2005, the defendant, Lamar Whitehead, engaged in a scheme in which he allegedly used the ID's of various Suffolk County residents without their permission and assumed those ID's to apply for loans and/or credit and thus to obtain goods, moneys, and services for himself.

That is the allegation in a nutshell. I will go into more detail later, at the conclusion of this case.

You will be considering charges of Scheme to Defraud, First Degree, Identity Theft, First Degree, Identity Theft, Third Degree, an Attempted Grand Larceny Second Degree.

In order to be selected as a juror in this case, you will be asked to give your solemn